



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

518-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

RENAISSANCE HOSPITAL- HOUSTON
C/O BURTON & HYDE PLLC
PO BOX 684749
AUSTIN TX 78768-4749

Carrier's Austin Representative Box
47

MFDR Date Received
JANUARY 25, 2007

Respondent Name

TASB RISK MGMT FUND

MFDR Tracking Number

M4-07-3292-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated January 24, 2007: "This bill should have been audited and reimbursed per the Stop-Loss reimbursement factor and methodology per the criteria as defined in TDI-DWC rule 134.401(c)(6)(A)...Per the stop-loss method the carrier should have reimbursed the provider \$190,889.88."

Requestor's Amended Position Statement Dated September 26, 2011: "The Requestor respectfully asks the Medical Fee Dispute Resolution Officer find the stop-loss method of calculating reimbursement applies in the above referenced and pending medical fee dispute and order additional reimbursement of \$35,647.52 for three reasons:

1. The Respondent admits that the stop-loss methodology applies to this admission. In the attached Explanation of Benefits (EOB), which was received by the Requestor on November 21, 2006, the Texas Association of School Boards admitted that the stop loss reimbursement methodology applies in this dispute. The EOB reads: '11/14/06 Audit remains as reimbursement was at 75%. Additional amount owed to total 75% per Stoploss'.
2. The respondent miscalculated the reimbursement amount under the rule; yet, if TASB had followed the 'Acute Care Inpatient Hospital Fee Guideline' as provided for in *adopted* 22 Tex. Reg. 6306 (1997) (former 28 TEX. ADMIN. CODE §134.401) more would still be due. The carrier calculated reimbursement as follows: ((Billed Charges – Implant Charges) x 75%) + ((Implant Cost x 10%) + Implant Cost). Pursuant to 28 TEX. ADMIN. Code §134.401(c)(4), additional reimbursements, as calculated above by TASB, apply only to bills that do not reach the stop loss threshold. If audited charges exceed the stop-loss threshold, as is true of [Claimant's] admission, reimbursement for the entire admission shall be paid using a Stop-Loss Reimbursement Factor (SLRF) of 75%. Therefore, it was improper to calculate the reimbursement amount for implants at cost plus 10% in this case. The correct formula for calculating reimbursement in this case, as dictated by the rule, is as follows: (Audited Charges x Stop Loss Reimbursement Factor) – Amount Previously Paid.
3. Medical Fee Dispute Resolution has previously issued orders identifying the same error made by TASB in calculating reimbursement and ordered additional reimbursement be paid to the hospital....Therefore, it was improper for TASB to calculate the reimbursement amount for implants at cost plus 10% in this case. All audited charges should have been paid using the stop-loss method. For these reasons, the Requestor

respectfully asks the Medical Fee Dispute Resolution Officer order that additional reimbursement be paid to the hospital in the amount of \$35,647.52 plus accrued interest.

Amount in Dispute: \$35,648.15

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated February 19, 2007: "The Staff Report...states that the language in the rule has specific parameters for payment of stop-loss bills. Two of these are that the services were unusually costly to the hospital (not simply high priced) and have been repriced to reasonable charges. Implantables when hospital charges are less than the stop-loss threshold are paid at 10% over invoice according to rule 134.401, and TASB feels that is a fair and reasonable allowance for implantables when charges for services other than implantables exceeds the stop-loss threshold. The Explanation of Benefits reflects our calculation of the benefit based on this position."

Response Submitted by: TASB Risk Management Fund

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
January 20, 2006 through January 31, 2006	Inpatient Hospital Services	\$35,648.15	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- W10 – No maximum allowable defined by fee guideline. Reimbursement made based on insurance carrier fair and reasonable reimbursement methodology. Paid at 10% over invoice(s).
- W1-Workers Compensation state fee schedule adjustment.
- W4 – No additional reimbursement allowed after review of appeal/reconsideration.
- 11/14/06 Audit remains as reimbursement was at 75%. Additional amount owed to total 75% per Stoploss.
- 11/14/06 Audit remains as implants were paid at 10% over invoice.

U.S. Bankruptcy Judge Michael Lynn issued a "STIPULATION AND ORDER GRANTING RELIEF FROM AUTOMATIC STAY TO PERMIT CONTINUANCE AND ADJUDICATION OF DISPUTED WORKERS COMPENSATION CLAIMS BEFORE THE TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS," dated August 27, 2010, in the case of *In re: Renaissance Hospital – Grand Prairie, Inc. d/b/a/ Renaissance Hospital – Grand Prairie, et al.*, in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division in Case No. 08-43775-7. The order lifted the automatic stay to allow continuance of the claim adjudication process as to the workers' compensation receivables before SOAH, effective October 1, 2010. The order specified John Dee Spicer as the Chapter 7 trustee of the debtor's estate. By letter dated October 5, 2010, Mr. Spicer provided express written authorization for Cass Burton of the law office of Burton & Hyde, PLLC, PO Box 684749, Austin, Texas 78768-4749, to be the point of contact on Mr. Spicer's behalf relating to matters between and among the debtors and the Division concerning medical fee disputes. The Division will utilize this address in all communications with the requestor regarding this medical fee dispute.

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that “Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection...” 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states “...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold.” Furthermore, (A) (v) of that same section states “...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed...” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$254,519.84. The Division concludes that the total audited charges exceed \$40,000.
2. In its original position statement, the requestor asserts that “This bill should have been audited and reimbursed per the Stop-Loss reimbursement factor and methodology per the criteria as defined in TDI-DWC rule 134.401(c)(6)(A).” 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that “This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission.” The Third Court of Appeals' November 13, 2008 opinion states that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” The requestor's original position statement failed to discuss the particulars of the admission in dispute that may constitute unusually extensive services. In its supplemental position statement, the requestor considered the Courts' final judgment. In regards to whether the services were unusually extensive, the Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually extensive services. The requestor's supplemental position statement asserts, that “The Respondent admits that the stop-loss methodology applies to this admission”. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).
3. 28 Texas Administrative Code §134.401(c)(6) states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The requestor in its supplemental position summary states: “...the Texas Association of School Boards admitted that the stop loss reimbursement methodology applies in this dispute. The EOB reads: ‘11/14/06 Audit remains as reimbursement was at 75%. Additional amount owed to total 75% per Stoploss’.”

The division notes that the audited charges of \$254,519.00 are discussed above as a separate and distinct factor pursuant to 28 Texas Administrative Code §134.401(c)(6)(A)(i)). In the adoption preamble to the Division's former *Acute Care Inpatient Hospital Fee Guideline*, 22 *Texas Register* 6276, the division concluded that "hospital charges are not a valid indicator of a hospital's costs of providing services." The division concludes that the billed charges for the services do not represent the cost of providing those services. The requestor fails to demonstrate that the hospital's resources used in this particular admission are unusually costly.

4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
 - Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission..." Review of the submitted documentation finds that the length of stay for this admission was seven surgical days and four ICU/CCU; therefore the standard per diem amounts of \$1,118.00 and \$1,560.00 apply respectively. The per diem rates multiplied by the allowable days result in a total allowable amount of \$14,066.00.
 - 28 Texas Administrative Code §134.401(c)(4)(A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)."
 - A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at \$95,201.00.
 - The Division finds the total allowable for the implants billed under revenue code 278 is:

Description of Implant per Itemized Statement	Quantity	Cost Invoice	Cost + 10%
Screw 7.5 x 45, 50	7	\$1,235.00/each	\$9,509.50
Graft Infuse Bone Med	4	\$4,400.00/each	\$19,360.00
Screw Self Drill 4.0	2	\$230.00/each	\$506.00
Surgiclip Medium Liga	1	No support for cost/invoice	\$0.00
Bone Growth Stimulator	1	No support for cost/invoice	\$0.00
Putty Allgrft 1cc DBX	4	No support for cost/invoice	\$0.00
Rod 5.5MM Curved	3	\$367.00/each	\$1,211.10
Locking Cap	6	\$167.00/each	\$1,102.20
Ball Fluted 5mm	1	No support for cost/invoice	\$0.00
TOTAL	29		\$31,688.80

- 28 Texas Administrative Code §134.401(c)(4)(B) allows that "When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (iv) Blood (revenue codes 380-399)." A review of the submitted hospital bill finds that the requestor billed \$2,500.00 for revenue code 381-Blood/Pkd Red, \$5,050.00 for revenue code 382-Blood/Whole, and \$1,430.84 for revenue code 391-Blood/Admin. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement." Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue codes 381, 382 and 391 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.
- 28 Texas Administrative Code §134.401(c)(4)(C) states "Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed \$250.00/unit for injection Ceftriaxone per

500mg, \$346.00/unit for injection Vancomycin to 500mg. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, additional reimbursement for these items cannot be recommended.

The division concludes that the total allowable for this admission is \$45,754.80. The respondent paid \$155,241.73. Based upon the documentation submitted, no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

Authorized Signature

_____	_____	3/26/2013
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.